TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 179.

JESUS M. BALZAC, APPELLANT,

vs.

THE PEOPLE OF PORTO RICO.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

FILED DECEMBER 5, 1921.

(28,001)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 21, 1921.

1 In the Name and by the Authority of the People of Porto Rico.

UNITED STATES OF AMERICA,
The President of the United States, ss:

In the District Court of Arecibo, P. R., May 31, 1918.

THE PEOPLE OF PORTO RICO

vs.

JESUS M. BALZAC.

Information Charging Libel.

Now comes José R. Aponte, prosecuting attorney, and files this information in open court against Jesús M. Balzac for libel, (misdemeanor) as provided in sections 243 and 244 of the Penal Code, committed as follows:

In Arecibo, Porto Rico, of the Judicial District of the same name, the defendant Jesús M. Balzac, Editor and Manager of the daily paper "El Baluarte" published and circulating in said Judicial District of Arecibo, unlawfully, wilfully and maliciously, published and caused to be composed, edited and published, on April 23, 1918, within the said Judicial District of Arecibo, P. R., and in the aforesaid paper, a defamatory, scandalous, false and malicious libel in the form of an article published under the heading "The Voice of the People," containing false, scandalous, malicious and defamatory matters, words and charges against the Governor of Porto Rico, Arthur Yager, the said libel reading as follows:

"The Voice of the People.—From the obscure depths of their wretched huts, homes of pain and sorrow, the Porto Rican working classes full of anguish and pain unceasingly exclaim: Bandit,
2 assassin, tyrant, despot. You rule as a Bonaparte, act as a Neron and command as a Marat. You trample on right, smother thought, suppress the tribune and the press and support abuse for the benefit of men without conscience because you have at your back the soldiers and guns, the police force and their clubs, the judges and prosecuting attorneys; because you are a Colossus and we are but atoms. That is abuse, outrage, injustice, crime, violence, massacre, force * * * This is not liberty or democracy. You have traduced the laws, outraged justice and trampled on honor. You have destroyed everything, even the hope of defense. That is tyranny. Your abuse is unbearable. Hear our protest and our exorcism * * * Listen to our vilification and malediction, since you did not care to hear our just complaints. That is your chastisement, our execration. We do not open our breasts to you because we believe there are no hearts in them. You are a living human being

without sentiment or feelings. You are a traitor. You have abused our patience and meekness, but hear, hear, monster. We, the vagabonds, the unfortunate, the proscribed from the land of the good, who wander about without passport and name, without personality or home, dead of hunger and pain, vanquished by the base and corrupt capitalist, who day after day sprinkle the soil with bitter sweat and copious tears; we, who bruise our breasts against the shop's table and leave portions of our quivering flesh in the machinery; the eternal rabble; the imbecile populace; the persecuted and massacred; we will no longer bear with your despotism, abuse and in-
3 famies. And in order that liberty may be reborn and ignominy may die, that honor may shine on our faces; in order that privileges and classes may be suppressed; that right may prevail and the martyrs in the infamous prisons may be liberated; that the son may be restored to his father and the husband to his wife and shelter be given to the children that have been abandoned by your fault, your great fault; in order that this *century* and its people may soon arise from abyection,—we declare—and hear it well, usurper—that sacrifice is nothing considering your outrageous and unconscious greatness; and we pledge our lives at the altar of liberty and democracy, that you, shapeless embryo of a race of liberators, have sprinkled with the blood of our craniums. We are already tired of the bloody robbery of your lackies and prefer that death take us to the bottom of the graves than be contaminated in the filthy and miry place of servitude which you have worked out in the fertile soil of this blessed land, which does not open to ingulf you because its virgin soil would become poisoned and brambles and thorns would grow up instead of flowers. You are so abominable that our soil refuses to give you sepulture.—The Knight-Errant."

All of which is tending to impeach the honesty, integrity, virtue, or reputation of the Hon. Arthur Yager, thereby exposing him to public hatred, contempt or ridicule.

This fact is contrary to the law for such cases provided and against the peace and dignity of the People of Porto Rico.

(Sd.) JOSÉ R. APONTE,
District Prosecuting Attorney.

4 The foregoing information is supported by the testimony of witnesses examined by me under oath and I solemnly believe there is just cause to present it in the court.

(Sd.) JOSÉ R. APONTE,
District Prosecuting Attorney.

Sworn to and subscribed before me this 31st day of May, 1918.

(Sd.) MANUEL L. CORBET,
Clerk of the District Court of Arecibo, P. R.

Session of May 31st, 1918, 3 p. m.

Case No. 881.

THE PEOPLE OF PORTO RICO

vs.

JESUS M. BALZAC.

Charge: Libel.

The defendant appeared in open court and after having been informed as provided for in Section 143 of the Code of Criminal Procedure, stated that his name was Jesús M. Balzac. The district attorney read the information and handed a copy of it to the said defendant, who pleaded not guilty.

UNITED STATES OF AMERICA,
The President of the United States, ss:

In the District Court for the Judicial District of Arecibo, P. R.

Case No. 881.

THE PEOPLE OF PORTO RICO

vs.

JESUS M. BALZAC.

Charge: Libel.

5 *Judgment.*

In view of the evidence examined during the session held on the 29th of July, 1918, the court finds the defendant, Jesús M. Balzac, guilty of the crime of libel as charged and sentences him to imprisonment for four months in the District Jail and the payment of the costs of this prosecution.

I, Manuel L. Colbert, Clerk of the District Court for the Judicial District of Arecibo, do hereby certify that the foregoing is a true and exact copy of the judgment rendered by the aforesaid court in the above-entitled criminal action, which was tried before the said court during the session held on the 29th of July, 1918, as appears from the Minutes of this Court of the session held on the said date. And for its inclusion in the corresponding record, I issue this copy under my signature and the official seal of the court in the city of Arecibo this 31st day of July, 1918.

(Sd.) MANUEL L. CORBET,
Clerk District Court.

In the District Court for the Judicial District of Arecibo, P. R.

Case No. 881.

THE PEOPLE OF PORTO RICO

vs.

JESUS M. BALZAC.

Charge: Libel.

To the Clerk and District Attorney of the District Court of Arecibo:

You are hereby notified that not being satisfied with the judgment rendered by the court on this date and in this case, I appeal to the Supreme Court of Porto Rico.

Arecibo, P. R., July 31, 1918.

(Sd.) JESÚS M. BALZAC.

6 Received copy this 31st day of July, 1918.

(Sd.) JOSÉ R. APONTE,
District Attorney.

Filed in my office this 31st day of July, 1918.

(Sd.) MANUEL L. COLBERT,
Clerk.

In the District Court for the Judicial District of Arecibo, P. R.

Case No. 881.

THE PEOPLE OF PORTO RICO

vs.

JESUS M. BALZAC.

Charge: Libel.

Statement of the Case.

Be it remembered that on July 29, 1918, in the District Court of Arecibo, Porto Rico, present Hon. Enrique Lloreda Casabo, judge of said court, the criminal prosecution brought by The People of Porto Rico against Jesús M. Balzac for the crime of Libel as defined in sections 243 and 244 of the Penal Code of Porto Rico was tried orally and publicly, The People of Porto Rico appearing by José R. Aponte, District Attorney of Arecibo, and the defendant being present in person and represented by his attorney, José de Jesús Tizol.

The parties having been asked by the court if they were ready for trial, counsel for the defendant requested that the marshal of the

court be called to state whether certain witnesses for the defense had been subpœnaed in accordance with a præcipe previously filed. The marshal reported that the Governor's secretary was at Jajome and that Colonel Shanton and Mr. Robert were not at their homes for which reason he had been unable to subpœna them; that the marshal of Jan Juan reported that he had not had time to subpœna the Commissioner of the Interior.

7 Attorney Tizol informed the court that there were other necessary witnesses for the defense who had not appeared, and asked leave of the court to file a motion regarding the absence of the witnesses and for a continuance. At the same time he moved orally that the defendant be allowed a trial by jury. The district attorney objected and the court overruled the motion on the ground that the Code of Criminal Procedure does not give the right to a trial by jury in these cases. Attorney Tizol excepted to this ruling and the court stated that even in the supposition that the law granted trials by juries in misdemeanor cases, the defendant should have asked for it at the time of his arraignment and not having done so, it should be understood that he waived that right. (Ex parte Torres, 4 P. R. R. 146.) The court added that a trial by jury can only be granted in a felony case and that privilege has not been extended to prosecutions for libel or any other misdemeanor cases. (The People v. Bird, 5 P. R. R. 183.) Attorney Tizol filed a written motion for a continuance and the court ordered that it be made a part of the record so that a copy thereof might be included in the transcript of the record.

The District attorney opposed the continuance for the reason that the testimony which some of the witnesses would give of facts referring to the Governor of Porto Rico can be given only by the Chief of the Government in accord with the Chief of Police because its context clearly shows that the acts were performed as measures of public policy and bear no relation to the crime of libel with which defendant Jesús M. Balzac is charged. Regarding the other testimony of Epifanio Fiz, Ramón Barrios, Santiago Iglesias and Henry W. Dooley, it is the personal opinions of these witnesses which have no weight under a plea of justification of a libel because the plea should be directed specially to the infamatory matter and should be supported by facts showing that the libelous matter was

8 published by the person charged with it and cannot be proved by a public rumor or hearsay. In support of this theory he cited 25 Cyc. 414, et seq., and Newell on Slander and Libel, 658 et seq. He further stated that this case had been continued four times prior to this date with the knowledge of the defendant's attorney who asked for the continuance and has had sufficient time to give the names of the witnesses to the court so that they might have been subpœnaed in due time.

The court ruled on the motion for continuance as follows:

Whereas, at the call of this case for trial the defendant by his attorney filed a verified motion for a continuance to the next term, which motion was opposed by the district attorney and argued by

both parties; whereas, the trial of this case was set in open court at the reading of the criminal docket on June 1st, 1918, for the 27th of the said month, and on the 26th, on motion of counsel for the defendant alleging that he was busy with other criminal cases before the District Court of San Juan, it was continued and again set for the 29th, on which date it was also continued for a similar reason and again set for July 10th, when it was again continued on account of the illness of the defendant, on whose motion was newly set for the 26th of this month, the said setting having been, on motion of counsel for defendant, continued to the 29th; whereas, notwithstanding the time elapsed and those four settings and continuances the defendant has not asked at any time that the witnesses referred to in the motion for continuance be subpœnaed and no showing was made of why the said witnesses were not previously subpœnaed. Whereas, subpœnas for the said witnesses were requested by telegraph on the 26th at noon, or only two days before the trial, said days being Saturday and Sunday, and therefore due diligence has not been shown; whereas, this court will close
9 its regular term within two days and thereafter the case will go over for three months more, as the next criminal term will be held in November, and that would be contrary to the rule of procedure with respect to a speedy trial as provided for in paragraph 1 of section 11 of the Code of Criminal Procedure; whereas, the said motion does not show the materiality of the evidence referred to therein, the same referring to letters and communications which in themselves constitute hearsay evidence; whereas, it has not been alleged that the facts to which that evidence would refer cannot be proven by some other witness. Therefore, in view of the case of The People v. Gallart, 11 P. R. R. 361, the court overrules the motion of the defendant and orders the case to trial.

Attorney Tizol excepted to the ruling of the court.

The information was read and Attorney Tizol, by leave of the court, filed a demurrer on the ground that the information does not charge the crime defined by sections 243 and 244 of the Penal Code, inasmuch as it lacks the requirements pointed out in the case of The People of Porto Rico vs. Garcia, decided by the Supreme Court. The district attorney opposed the demurrer on the ground that it was not in legal form and because in the case of The People vs. Aybar it was held that in such cases it is not necessary that the informations contain colloquims or innuendos, according to section 87 of the Code of Criminal Procedure. The court overruled the demurrer and Attorney Tizol excepted, stating that the defendant pleaded not guilty to the information and alleged as a defense that the supposed libelous publication is justifiable because it refers to a public official and does not mention the commission of a public crime.

Evidence for the Prosecution.

Having been duly sworn, RAMÓN ALFONSO RIVERA testi-
10 fied that he is the postmaster of Arecibo and was such postmaster in the month of April. That he knows a newspaper called "El Baluarte" which circulates by mail and its editor is J. M. Balzac whom he sees here. The district attorney shows him a newspaper which he examines and recognizes as the same newspaper of which about eighty copies circulated by mail. That J. M. Balzac has the privilege for the circulation of the newspaper. The district attorney offers in evidence No. 74 of the newspapers called "El Baluarte", of April 23, 1918, and it was admitted without objection by the defense.

JOSÉ ADORNO was duly sworn and, in answer to questions of the district attorney, testified that he is a resident of Arecibo and its Municipal Secretary; that formerly he was a journalist; that he knows the newspaper called "El Baluarte" which is published on Lealtad Street at the corner of Puente de Hierro Avenue, Arecibo, and its editor is J. M. Balzac. The newspaper introduced in evidence was shown to him and he testified that he knows it and has seen copies of it on several occasions; that on April 23rd he read in it an article headed "The Voice of the People" which he thinks refers to the Governor because the said article was published at a time when Governor Yager was taking certain steps to secure order and social welfare. I consider the article libelous upon the Governor from beginning to end it is a libel. It says: Bandit, assassin, tyrant, despot. You rule as a Bonaparte, act as Nero*n* and command as a Marat. You trample on right, smother thought, suppress the tribune and the press and support abuse for the benefit of men without conscience because you have at your back the soldiers and guns, the police force and their clubs, the judges and prosecuting attorneys; because you are a Colossus and we are but atoms. That is abuse, outrage, injustice, crime, violence, messacre, force * * * This is not liberty or democracy. You have tra-
11 duced the laws, outraged justice and trampled on honor. You have destroyed everything, even the hope of defense. That is tyranny. Your abuse is unbearable. Hear our protest and our exorcism * * * Listen to our vilification and malediction, since you did not care to hear our just complaints. That is your chastisement, our execration. We do not open our breasts to you because we believe there are no hearts in them. You are a living human being without sentiment or feelings. You are a traitor. You have abused our patience and meekness, but hear, hear, monster. We, the vagabonds, the unfortunate, the proscribed from the land of the good, who wander about without passport and name, without personality or home, dead of hunger and pain, vanquished by the base and corrupt capitalist, who day after — sprinkle the soil with bitter sweat and copious tears; we, who bruise our breasts against the shop's table and leave portions of our quivering flesh in

the machinery; the eternal rabble; the imbecile populace; the persecuted and massacred; we will no longer bear with your despotism, abuse and infamies * * * And in order that liberty may be reborn and ignominy may die, that honor may shine on our faces; in order that privileges and classes may be suppressed; that right may prevail and martyrs in the infamous prisons may be liberated; that the son may be restored to his father and the husband to his wife and shelter be given to the children that have been abandoned by your fault, your great fault; in order that this century and its people may soon arise from abyection,—we declare—and hear it well, usurper—that sacrifice is nothing considering your outrageous and unconscious greatness; and we pledge our lives at the
12 altar of liberty and democracy, that you, shapeless embryo of a race of liberators, have sprinkled with the blood of our craniums. We are already tired of the bloody robbery of your lackies and prefer that death take us to the bottom of the graves than be contaminated in the filthy and miry place of servitude which you have worked out in the fertile soil of this blessed land, which does not open to ingulf you because its virgin soil would become poisoned and brambles and thorns would grow up instead of flowers. You are so abominable that our soil refuses to give you sepulture." Witness says that all these expressions refer to the Governor because he represents a power in the island, and they are all written with the purpose of injuring his personality.

In answer to a question by the defense he said that the article refers to the Governor because when it was published the Governor had taken measures to secure order and had given instructions to the police to maintain order in the country so that the rights of everybody should be respected, which orders were published in the press to avoid incitation to rebellion, all having been done according to law.

RAMON SEIJO TAVAREZ was duly sworn and in reply to questions by the prosecuting attorney testified that he is a resident of Arecibo, a minor surgeon and an employee of the municipality, having been formerly a journalist. He has seen a newspaper published here called "El Baluarte" whose editor is Mr. Balzac (pointing at him), which paper he reads and pays for, having been a subscriber since it was first established. He read in No. 74 an article headed "The Voice of the People" and thought that it referred to the Governor, he being the Chief Executive in authority. He regards the article as defamatory of the Governor from beginning to end, as it employs such words as "bandit", "assassin", "tyrant" and "despot".
13 It says: "You *You* govern as a Bonaparte, act as a Neron and command as a Marat. You trample on the right, suppress thought, uphold abuse for the benefit of men without conscience because you are defended by the soldiers and guns, the police and their clubs, the judges and prosecuting attorneys; because you are a Colossus while we are atoms." The witness considered such words as libelous upon the Governor.

The Government's evidence having been examined it was agreed by the parties that the witness for the defense, Prudencio Rivera, should testify in this case the same as he did at the former trial of the case of People of Porto Rico vs. Jesus M. Balzac, No. 880.

Witness for the Defense.

PRUDENCIO RIVERA was duly sworn and in answer to questions by attorney Tizol testified that he is a resident of San Juan, organizer of The National Union of Cigar-makers of Porto Rico and vice-president of the Executive Committee of the Free Federation of Laborers; that in April of this year he lived at San Juan and at the time when the article headed "The Voice of the People" was written there was a strike. He knows Mr. Balzac and took part in the strike movement, explaining what he did. A meeting took place in Bayamón on September 1st, when the Second Agricultural Assembly was held for the purpose of carrying into execution measures which had been adopted at the former assembly, among them being one adopted at Bayamón for demanding a minimum agricultural wage of $1.50 and 75 cents for women. The Executive Committee of which witness is a member was instructed to demand the same from the Association of Sugar Producers, which they did, but received no answer. The same thing was done in November with the same result. Instructions were given to the Unions that they ask aid from the American Federation of Labor, and when we had made
14 known the indifference with which the matter was considered by those who should have considered it carefully we appealed to Governor Yager and asked him to call a meeting of the planters. He promised to do so but did not, so we appealed to Mr. Gompers, President of the American Federation of Labor. February 10th was set for a meeting of the Executive Committee of the American Federation of Labor to pass on the petition, but no such decision was reached, President Gompers sent us a copy of a citation for the interview and we met. The Executive Committee met and resolved to call on the Governor about the matter and he answered that "apparently there was no general strike and he deemed it unnecessary to issue the call." Notwithstanding the statements made by the Governor there was a strike since September at some places and while the strike was going on was when the article in the "Baluarte" appeared. He took part in the interview with the Governor, the last one having been held in the month of March. He knows of the protests made on account of the suspension of certain meetings and parades, but was not at the meeting which was suspended. He received instructions from the Executive Committee to proceed to Ponce to aróuse the District and on the day after his arrival there, in the first fortnight of April, he went to the telegraph office where he delivered a telegram he wanted to send to inform his Office of his arrival and of having met a number of laborers during the night and that a meeting had been held on Mendez Vigo Street, also stating that the police had not disturbed the order of the meeting; that he was informed by the telegraph operator that the telegram could

not be sent because it contained a criticism of the police force and asked that the money should be refunded to him which was done together with a note from the Chief of the Bureau. The newspapers which then took part in the campaign were "Justicia", "El Baluarte", "Yo Acuso", "Conciencia Popular", and some other popular newspaper of the workmen.

15 In answer to questions by the prosecuting attorney he said that he could not give the exact date when the strike commenced, but that the first reports came from Humacao in December and the strike had not terminated yet. That the agricultural strike we declared was terminated by the Government and not by us. At present we are not on a strike.

Judge: Yes or no; why did you say 'yes'?

Witness: We are not on a strike.

Pros. Atty.: You have stated that a telegram was returned to you in Ponce?

Witness: Yes, Sir. I know personally who issued the order. I saw it after it was shown to me by Palacios in a book containing Government's Circulars, from the Department of Interior, Mr. Enright being Commissioner of the Interior.

The "Baluarte" was a newspaper which made propaganda in favor of the strike; he had relations with Balzac, but does not know whether he was the editor of "Baluarte" at that time.

Pros. Atty.: I move the court to order that the whole testimony be stricken out, it being immaterial and making no reference to the defendant.

Atty. Tizol: I object. I called this witness to prove that there was a strike at that time.

Judge: I really think that a link is lacking to connect this testimony with the defendant, but I also think that it is unnecessary to strike it out because it may be considered pertinent.

I, Enrique Lloreda Casabo, Judge of the District Court of Arecibo, Porto Rico, do hereby certify that the foregoing statement of the case contains all the evidence examined at the trial of criminal action No. 881, prosecuted by The People of Porto Rico against Jesus M. Balzac for a crime of libel, as well as all the exceptions taken at said trial, the said Statement having been drafted

16 by the court after considering the statements made by the prosecuting attorney who was then the only party who appeared on October 25, 1918, at the hearing required by law; therefore I approve the same as it was presented and it is hereby ordered that as approved it forms a part of the Judgment-Roll.

Given under my hand and the seal of this Court in the city of Arecibo, this 26th day of May, 1919.

(Sd.) ENRIQUE LLOREDA,
Judge of the District Court of Arecibo.

In the District Court for the Judicial District of Arecibo, P. R.

THE PEOPLE OF PORTO RICO

vs.

JESUS M. BALZAC.

Libel.

Motion for Continuance.

Now comes the defendant by his attorney José de Jesús Tizol, and respectfully shows:

1st. That he was summoned to appear today in this court for the trial of the case of People of Porto Rico v. Jesus M. Balzac.

2nd. That in due time, about the 25th instant, he sent a telegram to the judge of this court praying for an order directed to the proper official for subpœnaing the following witnesses:

17 Pedro Rodriguez, Governor's Private Secretary; Geo. Shanton, Chief of Insular Police; José Muñoz Rivera, Secretary of the Insular Senate; Guillermo Esteves, Commissioner of the Interior, and Henry W. Dooley.

3rd. That according to the report of the marshal the said witnesses were not subpœnaed at San Juan, the place of their residence as duly given by this defense.

4th. That for that reason they were not present when the trial was commenced.

5th. The defense believes that the testimony which the said witnesses would give at the trial would be material to the case and not cumulative; that due diligence having been exercised on his part to obtain their testimony he believes that their presence at the trial is absolutely necessary and he is sure that they would testify as follows:

PEDRO RODRIGUEZ: That on January 30, 1918, at the request of Santiago Iglesias, he wrote him a letter in the following terms:

SIR:

In accordance with your request I have been instructed by the Governor to furnish you "with a copy of his telegram to the mayor of Guayama, as follows: San Juan, Porto Rico, January 29, 1918. Genaro Cautiño, mayor of Guayama, Porto Rico.—In view of the present condition of war and of the decision of the Department of Labor of the United States to send to Porto Rico a mediator for conciliation in this matter, no aid should be given to any strike or

movement at present and no permit should be granted for the purposes mentioned in your telegram. Arthur Yager.

Respectfully,
(Sd.) P. S. RODRIGUEZ,
Governor's Secretary.

GEO. SHANTON: That the following was contained in a circular letter sent to Andres Arellano on March 9, 1918, and signed by Geo. Shanton, Chief of the Insular Police: That in regard to parades of strikers on public roads and in view of the many crimes, no
18 permit should be given to strikers to use national or labor flags, or any flag of any kind, or musical instruments, that may infiltrate enthusiasm in the strikers.

That on February 1st, the following communication was sent to the District Chief of Humacao, to wit: Notify the mayor, by order of the Governor, not to permit parades by agitators of strikers in view of the present condition of war. The Police will not permit public meetings or parades on public roads, they only being entitled to enter into peaceful strikes without any parades.

We think he would also testify that on several occasions the police men under his orders have been furnished to protect the transportation of strike-breakers to the several centrals where strikes exist.

GUILLERMO ESTEVES would testify that as Commissioner of Interior he gave instructions in compliance with orders from the Governor of Porto Rico to the effect that certain telegrams should not be transmitted because they incited strikes and were not in a conciliatory form.

The said letter was also sent to Santiago Iglesias on April 3, 1918.

He would also testify that the telegraph service under his control is the only means available for the transmission of telegraphic messages.

JOSÉ MUÑOZ RIVERA: That as Secretary for the Senate he knows that the said Senate was declared in recess in November of last year when the Governor thought that the session was adjourned.

That on February of the following year and while the Legislative Assembly was in session by virtue of the recess, it was, however, called in special session in spite of the fact that the work for which it was convened had not been terminated.

That the Governor vetoed the following bills approved by
19 both Houses:

Creating a grand-jury system.

For the establishment of the People's Bank.

To promote the credit of the coffee industry.

To amend Section 178 of the Code of Criminal Procedure, by granting jury trials in some misdemeanor cases.

The resolution petitioning the Congress of the United States to extend to Porto Rico the rural credits and trade educational acts.

HENRY W. DOOLEY would testify concerning a letter which was sent from San Juan to Hon. F. C. Roberts on April 17, 1918, preferring special charges against Governor Yager, saying, among other things, that "no doubt he is not the man of the hour." In order to avoid copying the letter, we offer it in evidence separately, it having been published in "Justicia" on May 25, 1918.

The defense further says that counting upon the presence of witnesses Epifanio Fiz, Ramon Barrios and Santiago Iglesias, the last-named being absent in the United States but was expected to be in Porto Rico about this time, we deem his testimony necessary and it would be as follows:

EPIFANIO FIZ and RAMON BARRIO: Not having time to copy the report made by them and published in "Justicia" on April 20, 1918, we offer it separately also.

They would testify also as to a telegram sent to Senator Santiago Iglesias informing him that a high official of the Fajardo Sugar Co. knew of a communication of the Governor to the Executive Committee of the Federation two hours before this Committee reported, the telephone message notifying Mr. Bird that the Governor's letter was favorable to them.

SANTIAGO IGLESIAS: As may be seen, this witness is connected with nearly all of the foregoing evidence and furthermore he could testify as to the charges preferred by him against Governor Yager to President Wilson through Mr. Gompers, the President of the American Federation of Labor. He witnessed also the attitude taken by the said Institution at the last Convention when said Iglesias attended and at which also a resolution was adopted asking for the removal of Governor Yager and that Porto Rico be separated from the Bureau of Insular Affairs and annexed to the Department of Interior and that a committee be appointed to investigate the general conditions of the country, which committee has been recently appointed and whose decision, and we understand that its report should be awaited before proceeding to this trial.

Wherefore, we pray this court to continue the trial of this case until the next term.

Arecibo, Porto Rico, July 29, 1918.

(Sd.) JOSÉ DE JESÚS TIZOL.

I, José de Jesus Tizol, attorney-at-law with an office in San Juan, under oath declare:

1. That I am the attorney in this case and have made the foregoing motion.

2. That the facts therein stated are true.

(Sd.) JOSÉ DE JESÚS TIZOL.

Sworn to and subscribed before me this 29th day of July, 1918, by attorney José de Jesus Tizol, of age, whom I personally know.

(Sd.) MANUEL L. CORBET,
Clerk.

Filed in my office this 29th day of July, 1918.

(Sd.) MANUEL L. CORBET,
Clerk.

Attention is hereby called to the fact that defendant Jesus M. Balzac is temporarily at liberty under bail furnished by him.

I, Manuel L. Corbet, Clerk of the District Court for the
21 Judicial District of Arecibo, P. R., do hereby certify that the foregoing is a true and exact copy of the original as it appears of record in the court in criminal case No. 881 brought by The People of Porto Rico against Jesus M. Balzac for libel, and to be forwarded to the Secretary of the Supreme Court of Porto Rico in compliance with section 356 of the Code of Criminal Procedure as amended by Act of March 7, 1908, I issue this copy under my signature and the official seal of the court, in the city of Arecibo, this 7th day of June, 1919.

(Sd.) MANUEL L. CORBET,
Clerk of the District Court of Arecibo, P. R.

In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

Opinion of the Court.

Delivered by Mr. Justice Del Toro.

San Juan, Porto Rico, March 4, 1920.

The reasoning contained in the Opinion of this Court delivered by Mr. Justice Wolf as a basis for the judgment just rendered in appeal No. 1416, People v. Balzac, are entirely applicable to this case.

Here also the language employed in the libelous publica-
22 tion is so abusive that we believe it would be improper to transcribe it. The court has examined it and considers that although the article does not directly name the Governor of Porto Rico, Arthur Yager, there is no doubt that it refers to him and so was understood by the witnesses, residents of the district of Arecibo,

who testified at the trial; that the entire publication tends to expose said Governor Yager to public hatred, contempt and ridicule; that defendant Balzac, who was the editor of the paper containing the said article, is responsible for the article and that is was published and circulated in said district of Arecibo; that Balzac has not shown that the charges contained in the said libelous article are true or that the article was published with good intentions and for justifiable purposes and, therefore, he was properly found guilty and sentenced by the District Court to four months' imprisonment.

In view of all the foregoing the appeal must be dismissed and the judgment appealed from affirmed.

(So.) EMILIO DEL TORO,
Associate Justice.

In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

Judgment.

San Juan, Porto Rico, March 4, 1920.

This court has considered the transcript of the record, the briefs filed by both parties and the oral argument of the appellee,
23 the only party who appeared at the hearing, and for the reasons set forth in the preceding opinion, as well as in the opinion in case No. 1416, decided on this date, it is held that the appeal should be dismissed and the judgment of the District Court of Arecibo of May 31, 1919, affirmed. Let this judgment, together with the opinion on which it is based, be communicated to the lower court.

Adjudged and signed by José C. Hernández, Adolph G. Wolf, Emilio del Toro, Pedro de Aldrey, H. M. Hutchison.

I, Joaquin Lopez Cruz, Secretary-Reporter of the Supreme Court of Porto Rico, do hereby certify that the foregoing copies of the opinion and judgment agree with the originals; and in order to attach them to the proper record, I issue this copy in San Juan, Porto Rico, this 10th day of March, 1920.

(Sd.) JOAQUIN LOPEZ CRUZ,
Secretary-Reporter,
By FELIPE JANER, JR.,
Deputy Secretary.

In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

To the Honorable the Supreme Court:

Now comes defendant Jesus M. Balzac by his attorney Abraham Peña before this Hon. Court and respectfully shows:

That not being satisfied with the judgment rendered by this Court affirming the judgment of the District Court for the
21 Judicial District of Arecibo, he appeals to the Supreme Court of the United States in accordance with the right granted him by section 43 of the Organic Act for Porto Rico, and on the following two Constitutional grounds, to wit:

1st. Because the defendant has been denied the right granted him by the Sixth Amendment to the Constitution of the United States of being tried by a jury.

2nd. Because, in any event, if the law under which he was convicted and sentenced furnishes sufficient grounds therefore, it should be considered, by reason of its excessive harshness, as contrary to the letter and spirit of the First Amendment to the Constitution of the United States.

Therefore, the defendant prays this court to consider the said appeal as taken to the Supreme Court of the United States and allow it by such approval as may be proper.

San Juan, Porto Rico, March 11, 1920.

(Sd.) ABRAHAM PEÑA,
Attorney for Defendant and Appellant.

In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Libel.

Assignment of Errors.

Now comes the defendant-appellant, Jesus M. Balzac, by his undersigned attorney and files this assignment of errors on which
25 he bases his appeal to the Supreme Court of the United States from the judgment of the Supreme Court of Porto

Rico of March 4, 1920, whereby the judgment of the District Court of Arecibo of the 31st of May, 1919, was affirmed.

The errors on which the defendant-appellant bases his appeal are as follows:

1. The Supreme Court of Porto Rico erred in dismissing the plea of the defendant-appellant that the said defendant was denied the right to be tried by a jury.

That right is set forth and recognized by the Sixth Amendment to the Constitution of the United States, and in this case a freeman has been deprived of he right to be tried by his peers.

2. The Supreme Court of Porto Rico erred in affirming the judgment of the District Court of Arecibo of May 31, 1919, sentencing the defendant to four months in jail for the crime of libel, which sentence the defendant considers excessive and severe and contrary to the spirit and letter of the First Amendment to the Constitution of the United States, inasmuch as he said crime of libel was commited at a historical moment of agitation and excitement in the country due to the agricultural strikes and the judgment might have been satisfied by only sentencing the defendant to pay a fine.

The above are the Assignments of Error that the appellant points out for the purposes of his appeal, which are respectfully submitted to this Supreme Court of Porto Rico.

San Juan, Porto Rica, March 12, 1920.

(Sd.) ABRAHAM PEÑA,
Attorney for Defendant-Appellant.

26 In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

On Appeal to the Supreme Court of the United States.

Order.

San Juan, Porto Rico, March 20, 1920.

The appeal in the above-entitled cause is hereby allowed, the appellant being required to file a bond in the sum of One Thousand Dollars to remain in temporary liberty while the said appeal is pending, and also a bond in the sum of Three Hundred Dollars to answer for the costs that may be imposed upon him, the said bonds to be approved by the Chief Justice of this Court: and it is further

ordered that appellant file a Præcipe of the proceedings and papers to be included in the transcript on appeal, according to Rule 8 of the Supreme Court of the United States, the said documents to be translated into the English language and filed in the office of the Secretary of this Court within the period fixed by law, to be forwarded to the said Supreme Court of the United States.

The court so ordered it and the Chief Justice signs; attest.

(Sd.) JOSÉ C. HERNÁNDEZ,
Chief Justice.

" JOAQUIN LOPEZ,
Secretary-Reporter.

27 In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Bond.

UNITED STATES OF AMERICA,
The President of the United States:

By these presents, We, Santiago Iglesias and Inés Rita Aybar de Peña, residents of the District of San Juan, are firmly and duly bound unto the People of Porto Rico in the sum of One Thousand Dollars ($1,000), to the payment of which well and truly to be made if appellant Jesus M. Balzac should fail to comply with the obligation hereinafter mentioned we not only bind ourselves jointly and severally by this instrument but also our heirs, executors and administrators.

Signed with our seals this nineteenth day of March, 1920.

The condition of the foregoing bond is as follows:

Whereas, attorney Abraham Peña has taken an appeal in behalf of defendant-appellant, Jesus M. Balzac, to the Supreme Court of the United States from the judgment rendered by the Supreme Court of Porto Rico on March 4, 1920, whereby the judgment of the District Court of Arecibo of the 31st of May, 1919, was affirmed, the said judgment sentencing the defendant to four months in jail.

28 Whereas, the said appeal has been allowed by an order of the 19th of March, 1920, wherein the Supreme Court of Porto Rico required a bond from the appellant in the sum of One Thousand Dollars for his temporary liberty while the said appeal is being considered and decided by the Supreme Court of the United States.

Therefore, by this bond we shall be held liable for the appearance of said Jesus M. Balzac before the Supreme Court of Porto Rico or before the District Court for the Judicial District of Arecibo and for his submission and obedience to any rules or orders that may be

made by any of said courts by reason of the said appeal, and also that the said Jesus M. Balzac shall appear in any of the aforesaid courts at the time and day on which he may be summoned to appear, in which case this obligation or bond shall be null and void; but if the said Jesus M. Balzac should fail to appear before any of the said courts and submit to the orders that may be rendered by such courts by reason of the appeal taken, this bond or obligation shall remain in full force and may be made effective.

(Sd.) SANTIAGO IGLESIAS.
INÉS R. A. DE PEÑA.

Signed before me by Santiago Iglesias and Inés R. A. de Peña, of age, property owners, residents of this city, to me personally known, in San Juan, P. R., this 19th day of March, 1920.

(Sd.) JOSÉ SOTO RIVERA,
Notary Public.

No. 223.

I, Santiago Iglesias, of this city, being duly sworn, say: That I am a resident of this city of San Juan; that I own real estate in the Municipality of San Juan of the value of more than One
29 Thousand and Two Hundred Dollars, exclusive of all lien thereon; that I pay taxes to the Treasury of Porto Rico of more than fifteen dollars ($15), and that the said property is not subject to any liens or obligations nor exempt from execution for privilege of any kind; that in assuming the foregoing obligation as surety for appellant Jesus M. Balzac I do so freely and without any mental reservation or purpose of evasion.

(Sd.) SANTIAGO IGLESIAS.

Sworn to and subscribed before me by Santiago Iglesias, of age, property owner, resident of this city, to me personally known, this 19th day of March, 1920.

[Notary's Seal.] (Sd.) JOSÉ SOTO RIVERA,
Notary Public.

Internal Revenue stamp of 25 cts., cancelled.

I, Inés R. Aybar de Peña, of this city, being duly sworn, say: That I am a resident of this city of San Juan; that I own real estate in the Municipality of Mayaguez of the value of more than One Thousand and Two Hundred Dollars ($1,200) exclusive of all liens thereon; that I pay taxes to the Treasury of Porto Rico of more than fifteen dollars ($15), and that the said property is not subject to any liens or obligations nor exempt from execution for privilege of any kind; that in assuming the foregoing obligation as surety for appellant Jesus M. Balzac I do so freely and without any mental reservation or purpose of evasion.

(Sd.) INÉS R. A. DE PEÑA.

30 No. 224.

Sworn to and subscribed before me by Inés R. Aybar de Peña, of age, property owner, resident of this city, to me personally known, in San Juan, P. R., this 19th day of March, 1920.

[Notary's Seal.] (Sd.) JOSÉ SOTO RIVERA,
Notary Public.

Internal Revenue stamp of 25 cts., cancelled.

In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Bond.

UNITED STATES OF AMERICA,
The President of the United States:

By these presents, We, Santiago Iglesias and Inés Rita Aybar de Peña, residents of the District of San Juan, are firmly and duly bound unto The People of Porto Rico in the sum of Three Hundred Dollars ($300), to the payment of which well and truly to be made if appellant Jesus M. Balzac should be sente-ced to pay the costs
31 in the appeal taken as hereinafter stated we not only bind ourselves jointly and severally by this instrument, but also our heirs, executors and administrators.

The condition of the foregoing obligation is as follows:

Whereas, attorney Abraham Peña has taken an appeal in behalf of defendant-appellant Jesús M. Balzac to the Supreme Court of the United States from the judgment rendered by the Supreme Court of Porto Rico on March 4, 1920, whereby the judgment of the District Court of Arecibo of May 31, 1919, was affirmed, the said judgment sentencing the defendant to four months in jail.

Whereas, the said appeal has been allowed by order of March 20, 1920, wherein the Supreme Court of Porto Rico also required a bond from the appellant in the sum of One Thousand Dollars for his temporary liberty and a bond of Three Hundred Dollars for the costs of the appeal.

Wherefore, by this bond we are held liable for the appearance of said Jesus M. Balzac before the Supreme Court of Porto Rico or the District Court for the Judicial District of Arecibo and for his submission and obedience to all rules and orders that may be made by the said courts by reason of the said appeal and for the payment by said defendant-appellant of any costs that he may be ordered to pay, in which case this obligation or bond shall be null and void, but if

said Jesus M. Balzac should fail to pay such costs this bond or obligation shall remain in full force and may be made effective.

(Sd.) INÉS R. A. DE PEÑA.
" SANTIAGO IGLESIAS.

Signed before me by Inés R. Albar de Peña and by Santiago Iglesias, of age, property owners, residents of this city, to me
32 personally known, in San Juan, Porto Rico, this — day of April, 1920.

——— ———,
Notary Public.

No. —.

I, Inés R. Aybar de Peña, of this city, being duly sworn, say: that I am a resident of this city of San Juan; that I own real estate in the Municipality of Mayaguez of the value of more than One Thousand and Two Hundred Dollars, exclusive of all liens thereon; that I pay taxes to the Treasury of Porto Rico, of more than fifteen dollars ($15), and that the said property is not subject to any liens or obligations nor exempt from execution for privilege of any kind; that in assuming the foregoing obligation as surety for appellant Jesus M. Balzac, I do so freely and without any mental reservation or purpose of evasion.

[Notary's Seal.] (Sd.) INÉS R. A. DE PEÑA.

Aff. 696.

Internal Revenue stamp of 25 cts., cancelled.

Sworn to and subscribed before me by Inés R. Aybar de Peña, of age, property owner, resident of this city, to me personally known, in San Juan, Porto Rico, this 7th day of April, 1920.

(Sd.) ANGEL R. DE JESÚS,
Notary Public.

33 I, Santiago Iglesias, of this city, being duly sworn, say: that I am a resident of this city of San Juan; that I own real estate in the Municipality of San Juan of the value of more than One Thousand and Two Hundred Dollars ($1,200) exclusive of all liens thereon; that I pay taxes to the Treasury of Porto Rico of more than fifteen dollars ($15), and that the said property is not subject to any liens or obligations nor exempt from execution for privilege of any kind; that in assuming the foregoing obligation as surety for appellant Jesus M. Balzac I do so freely and without any mental reservation or purpose of evasion.

(Sd.) SANTIAGO IGLESIAS.

No. 697.

Subscribed and sworn to before me by Santiago Iglesias, of age, property owner, resident of this city, to me personally known, in San Juan, Porto Rico, this — day of April, 1920.

[Notary's Seal.] (Sd.) ANGEL R. DE JESÚS,
Notary Public.

Internal Revenue stamp of 25 cts., cancelled.

34 In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

Order.

San Juan, Porto Rico, April 8, 1920.

The bonds for One Thousand Dollars ($1,000) and Three Hundred Dollars ($300) respectively given by Santiago Iglesias and Inés Rita Aybar de Peña in the appeal taken by the defendant in the above-entitled cause having been considered, the same are approved; and it is ordered that while such appeal is pending the defendant be temporarily at liberty.

The court so ordered and the Chief Justice signs; attest.

(Sd.) JOSÉ C. HERNANDEZ,
Chief Justice.

" JOAQUIN LOPEZ,
Secretary-Reporter.

35 In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

v.

JESÚS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

On Appeal to the Supreme Court of the United States.

Citation.

UNITED STATES OF AMERICA, *ss:*

To the People of Porto Rico, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within sixty days from the date hereof, pursuant to an appeal filed in the Clerk's office of the Supreme Court of Porto Rico, wherein Jesús M. Balzac is appellant and you are appellee, to show cause, if any there be, why

the judgment rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable José C. Hernández, Chief Justice of the Supreme Court of Porto Rico, this 13th day of April in the year of Our Lord one thousand nine hundred and twenty.

JOSÉ C. HERNÁNDEZ,
Chief Justice of the Supreme Court of Porto Rico.

Attest:

[Seal Supreme Court of Porto Rico, United States of America.]

JOAQUIN LOPEZ,
Secretary-Reporter of the
Supreme Court of Porto Rico.

Supreme Court of Porto Rico.

Marshal's Office.

Received this citation on its date and served the same by delivering personally a copy thereof to the Hon. Attorney General of Porto Rico, at San Juan, Porto Rico, this 14th day of April, 1920.

S. C. BOSTHNELL,
Marshal.

36 In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESÚS M. BALZAC, Defendant and Appellant.

Libel.

Præcipe for Record.

The Clerk of this Court is hereby requested to prepare a certified transcript of the record in the above-entitled cause for the use of the Supreme Court of the United States by including therein the following:

1. Information.
2. Judgment of the District Court of Arecibo, P. R.
3. Appeal to the Supreme Court of Porto Rico.
4. Statement of the Case.
5. Motion for continuance.
6. Opinion of the Supreme Court.

7. Judgment of the Supreme Court.
8. Appeal to the Supreme Court of the United States.
9. Assignment of Errors.
10. Order allowing appeal.
11. Bond for temporary liberty of defendant.
12. Bond for costs.
13. Order approving bonds.
14. Citation.
15. This Præcipe.
16. Notice of filing of Præcipe with proof of service.

San Juan, Porto Rico, July 28, 1920.

(Sd.) LCDO. ABRAHAM PEÑA,
Attorney for Defendant-Appellant.

37 No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESÚS M. BALZAC, Defendant and Appellant.

Libel.

To Salvador Mestre,
Attorney General of Porto Rico:

Please take notice that on the 28th of July, 1920, the undersigned filed with the Clerk of this Court a Præcipe for the record to be transmitted to the Supreme Court of the United States on the appeal taken in the above cause, a copy of which Præcipe is hereby served on you.

Dated, San Juan, Porto Rico, ——.

(Sd.) LCDO. ABRAHAM PEÑA,
Attorney for Defendant-Appellant.

38 ISLAND OF PORTO RICO,
District of San Juan, ss:

I, Abraham Peña, being duly sworn, depose and say: that I am the attorney for the appellant herein; that on the 28th of July, 1920, I served a copy of the foregoing notice of filing and of the Præcipe therein referred to upon Salvador Mestre, Attorney General of Porto Rico, by delivering in his office, in San Juan, Porto Rico, true copies of said documents.

San Juan, Porto Rico.

(Sd.) LCDO. ABRAHAM PEÑA,
Attorney for Defendant-Appellant.

Subscribed and sworn to before me, this 28th day of July, 1920, by Abraham Peña, of full age, lawyer, and resident of San Juan, Porto Rico, to me personally known.

(Sd.) ANTONIO TRUJILLO GUIL.

Aff. No. 3206.

Internal Revenue stamp cancelled.

39 In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Libel.

On Appeal to the Supreme Court of the United States.

Translator's Certificate.

I, Felipe Janer, Jr., official interpreter and translator of the Supreme Court of Porto Rico, do hereby certify:

That the foregoing is a true and faithful translation of their respective originals as the same appear from the original record of this case on file in this office.

In testimony whereof, I have signed this certificate in the city of San Juan, Porto Rico, this 20th day of October, 1920.

FELIPE JANER, JR.,
Interpreter and Translator of the Supreme Court of Porto Rico.

40 In the Supreme Court of Porto Rico.

No. 1417.

THE PEOPLE OF PORTO RICO, Plaintiff and Appellee,

vs.

JESUS M. BALZAC, Defendant and Appellant.

Appeal from the District Court of Arecibo.

On Appeal to the Supreme Court of the United States.

Clerk's Certificate.

I, Joaquin Lopez Cruz, Secretary-Reporter of the Supreme Court of Porto Rico, do hereby certify:

That the foregoing papers and proceedings had in the above-entitled case are true and faithful copies of their respective originals as the same appear on file and of record in this office and embodied in this transcript by the appellant, according to the præcipe filed in my office by said appellant; I further certify that the translations of said papers and proceedings have been revised by the official interpreter and translator of this court, as shown by his certificate hereto attached and made a part of this transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of this court, in the city of San Juan, Porto Rico, this 20th day of October, 1920.

JOAQUIN LOPEZ,
Secretary-Reporter of the Supreme Court of Porto Rico.

[One $10 and one $5 stamp, canceled.]

Endorsed on cover: File No. 28,001. Porto Rico Supreme Court. Term No. 179. Jesús M. Balzac, appellant, vs. The People of Porto Rico. Filed December 7th, 1920. File No. 28,001.

Office Supreme Court, U. S.
FILED
NOV 29 1921
WM. R. STANSBURY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1921.

Nos. 178, 179.

JESUS M. BALZAC, APPELLANT,

vs.

THE PEOPLE OF PORTO RICO.

BRIEF FOR APPELLANT.

JACKSON H. RALSTON,
STANLEY D. WILLIS,
WM. T. RANKIN,
Attorneys for Appellant.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

Nos. 178, 179.

JESUS M. BALZAC, APPELLANT,

vs.

THE PEOPLE OF PORTO RICO.

BRIEF FOR APPELLANT.

Statement of Facts.

The above cases are briefed together, being similar in fact and identical in principle.

In the first case, the appellant was indicted in the District Court of Arecibo, Porto Rico, May 31, 1918, charged with having libelled the then Governor of Porto Rico by the use of picturesque language, contained in an issue of a paper known as El Baluarte. The trial was entered upon on July 29, 1918, and, at its opening, the attorney for the defendant moved that he be allowed trial by jury. To this the District Attorney objected, on the ground that in libel cases it had been decided that the District Court had jurisdiction, and that it was plainly provided in the Penal Code that a trial by jury was not required in misdemeanor cases (Rec., p. 5). The motion was overruled on the ground that no right was conferred to a jury

trial in such cases under the criminal procedure of Porto Rico (Rec., p. 5). The action of the court was excepted to, but the trial proceeded, and, after the taking of the testimony, a conviction was had, and the defendant was sentenced to serve five months in jail and to pay costs (Rec., p. 3).

An appeal was taken to the Supreme Court of Porto Rico. The errors assigned, as appear from the opinion of the court (Rec., p. 17), included the contention of appellant that he was entitled to a jury trial, which contention the Supreme Court denied on authority of People of Porto Rico, et al. *vs.* Carlos Tapia, and People of Porto Rico *vs.* Jose Muratti, 245 U. S., 639.

From the action of the Supreme Court of Porto Rico an appeal was taken to this court.

The facts in No. 179 are to all intents and purposes identical with those above set forth as to No. 178, and a resume therefore need not be given.

Assignments of Error.

In each case the assignments of error upon which the appellant appears in this court are as follows:

> "1st. Because the defendant has been denied the right granted him by the Sixth Amendment to the Constitution of the United States of being tried by a jury.
>
> "2nd. Because, in any event, if the law under which he was convicted and sentenced furnishes sufficient grounds therefor, it should be considered, by reason of its excessive harshness, as contrary to the letter and spirit of the First Amendment to the Constitution of the United States."

ARGUMENT.

In this argument we shall not discuss the second assignment. We do not waive it but confine ourselves to calling attention to the fact that the language complained of did not exceed "exuberant expressions of meridional speech." (Grandia *vs.* Pittingill, 222 U. S., 452, 56 Law Ed., 267). Any punishment therefore is excessive and unwarranted.

Stress seems to have been laid in the courts below upon the fact that the offenses charged were only misdemeanors, and that, by the laws of Porto Rico, misdemeanors may not be the subject of jury trial. Claiming as we do the benefit of the Constitutional provisions, this argument can have no weight in this court. We need not go further than to refer to the case of Callan *vs.* Wilson, 127 U. S., 540, 556, wherein is cited with approval the decision of Mr. Justice Blatchford, then a member of the Supreme Court of the United States, who, sitting in a lower court, in Re Dana, 7 Benedict, p. 1, said:

> "Even if it were to be conceded, that notwithstanding the provision in the Constitution that 'the trial of all crimes, except in cases of impeachment,' shall be by jury, Congress has the right to provide for the trial, in the District of Columbia, by a court without a jury, of such offenses as were, by the laws and usages in force at the time of the adoption of the Constitution, triable without a jury, it is a matter of history, that the offense of libel was always triable and tried, by a jury."

With this introduction we may consider the question:

In the Territories of the United States is trial by jury under the Constitution obligatory?

The answer to this question, considering numerous decisions of this Honorable Court, must be in the

affirmative. This has been expressly decided in several cases under the 7th Amendment to the Constitution, as, for instance, Black *vs.* Jackson, 177 U. S., 349, a case arising in Oklahoma Territory; and the American Publishing Company *vs.* Fisher, 166 U. S., 464, coming up from the Territory of Utah. The territorial law providing for verdict in civil cases upon the concurrence of nine or more members of the jury was held invalid in the latter case, in that it constituted an infraction of the 7th Amendment to the Constitution of the United States.

The same doctrine has been held as to the 6th Amendment, applying to jury trials in criminal cases. In the case of Reynolds *vs.* United States, 98 U. S., 145, 167, arising in the then Territory of Utah, it was held by this Honorable Court, speaking through Chief Justice Waite, that:

> "By the Constitution of the United States (Amend. VI) the accused was entitled to a trial by an impartial jury."

It is instructive to note that in the same case another constitutional provision relating purely to procedure was referred to as being in full force and effect, for the court, referring to the absence of a witness, whose prior testimony was used, said:

> "The Constitution gives the accused a right to a trial at which he should be confronted with the witnesses against him."

The language of the above cases, therefore, offers no limit to the workings of the Constitution over any territory coming within the dominion of the United States, and such apparently was the idea of Chief

Justice Taney, as expressed in the case of Dred Scott *vs.* Sandford, 19 Howard, 393, 633, when he said:

> "Nor can Congress deny to the people the right to keep and bear arms, nor the right to trial by jury, nor compel anyone to be a witness against himself in a criminal proceeding. . . . So, too, it will hardly be contended that Congress could by law quarter a soldier in a house in a territory without the consent of the owner, in time of peace; nor in time of war, but in a manner prescribed by law. Nor could they by law forfeit the property of a citizen in a territory who was convicted of treason, for a longer period than the life of the person convicted; nor take private property for public use without just compensation."

So, in the case of Thompson *vs.* State of Utah, 170 U. S., 343, 347, it was said:

> "It is equally beyond question that the provisions of the national Constitution relating to trials by jury for crimes and to criminal prosecutions apply to the Territories of the United States."

Of course, the same rule holds in the District of Columbia (Callan *vs.* Wilson, 127 U. S., 540).

We take it for granted that no particular form of words, and no particular act, is necessary to show that it is the intention of Congress to treat Porto Rico as incorporated into the United States. Thus in Capital Traction Co. *vs.* Hof, 174 U. S., 1, 43 L. Ed., 873, no reference whatever was made to any act extending the provisions of the Constitution to the District of Columbia and this Court treated the matter as beyond doubt. The same idea was at the foundation of the case of Callan *vs.* Wilson, elsewhere referred to.

In the case of Rasmussen *vs.* United States, 197 U. S., 516, 49 L. Ed., 862, after discussing the effect

of the treaty with Russia upon the inhabitants of Alaska, this Court found that Congress clearly contemplated the incorporation of Alaska into the United States, because of the provisions of the Act of July 20, 1868, concerning Internal Revenue taxation, and the Act of July 27, 1868, extending the laws of the United States relating to customs, commerce and navigation over Alaska, and establishing a collection district therein.

This intention of Congress was further evidenced by subsequent Acts of Congress not necessary to refer to. Hereafter, in this brief, we enumerate a great variety of statutes expressly extended to Porto Rico and clearly distinguishing between the position of Porto Rico and that of the Philippine Islands. It was not contended in the Rasmussen case, or elsewhere that we are aware, that there is any particular formula described to evidence the intention of Congress to extend the Constitution over new territories.

In Low *vs.* United States (U. S. C. C. A., Ohio), 169 Fed., 86, it was declared that there is no statute providing for trial by a federal court without a jury, excepting cases in equity or maritime jurisdiction or in bankruptcy, and that under Rev. St. Section 566, the trial of issues of fact in the District Court, save in the excepted cases, must be by jury. Also that under the provisions of Amendment 5 of the Constitution, a "crime" is not necessarily an infamous offense, but includes every offense of a serious or atrocious character, involving the possible infliction of a long imprisonment, *which offenses must be tried by a jury.* And it was so held in Frank *vs.* United States (U. S. C. C. A., Ohio), 192 Fed., 864, and likewise held that, if an offense amounting to a crime should not be tried by a jury, any judgment would be a nullity.

It was said in the case of Downes *vs.* Bidwell, 182 U. S., 244, 45 L. Ed., 1088, that the Constitution, in-

cluding the section under discussion, extends only to the United States and its organized Territories, and the question therefore arises:

Was Porto Rico such an organized territory of the United States at the time of the occurrences complained of as placed it under the 6th Amendment to the Constitution?

If Porto Rico were such an organized territory, then, beyond a peradventure, it was subject to section 1891 of the Revised Statutes of the United States, reading as follows:

> "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized Territories, and in every Territory hereafter organized as elsewhere within the United States."

Historically, we may note that in the organic law controlling the Philippine Islands, being Act of 1902 providing for temporary civil government (32 Stat., 691, Chap. 1369) there was an express provision that Section 1891 of the Revised Statute should not apply to them (Dorr et al., *vs.* Unites States, 195 U. S., 138). When the Foraker Act (31 Stat., p. 77), which was the first organic act controlling Porto Rico, was passed, it was entirely silent with regard to the application of Section 1891, while it is significant that by its Section 35, writs of error and appeals from the final decisions of the Supreme Court of Porto Rico were allowed to the Supreme Court of the United States "In all cases where the Constitution of the United States, or a treaty thereof, or an Act of Congress is brought in question, and the right claimed thereunder is denied."

Other steps taken by Congress before the later act, comprehensively controlling Porto Rico, are significant

of a definite intent of Congress toward Porto Rico different from that usually manifested toward the Philippines. Thus:

(*a*) There was organized within the limits of Porto Rico a District Court of the United States, having the powers of the District and Circuit Courts of the United States. 31 Stat. L., 84, 7 Fed. Stat. Ann., 1273.

(*b*) Appeals and writs of error were allowed to the Supreme Court of the United States from the Supreme Court of Porto Rico in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress was brought in question and the right claimed thereunder denied. 31 Stat. L., 85, 7 Fed. St. Ann., 1275.

(To say that an appeal should be allowed in a case where the Constitution was called in question, and to say the Constitution nevertheless did not rule in Porto Rico, but that only a part of the Constitution obtained there, would seem to indulge in contradiction.)

(*c*) For about 20 years its regularly organized District Court of the United States has, pursuant to statute, like other courts in this country, received the reports of the Supreme Court. 32 Stat. L., 630, 5 Fed. St. Ann., 705.

(*d*) For about 17 years West Point Cadets and Annapolis Midshipmen have, pursuant to statute, attended their respective schools from Porto Rico. 32 Stat. L., 1011, 6 Fed. St. Ann., 420; 32 Stat. L., 1198, 6 Fed. St. Ann., 1018.

(*e*) For about 20 years United States stamps have been sold in Porto Rico. 34 Stat. L., 620, 7 Fed. St. Ann., 1285.

(*f*) For about 18 years the provisions of the Revised Statutes relative to statement of quality and value of goods clearing from the United States to foreign ports have extended to Porto Rico. 32 Stat. L., 172, 9 Fed. St. Ann., 303.

(*g*) For about 14 years the navigable waters of the United States and Porto Rico have been divided into five districts, of which Porto Rico is the second. 34 Stat. L., 190, 9 Fed. St. Ann., 321.

(*h*) For about 11 years the copyright statutes of the Union have been enforced by the District Courts of Porto Rico. 35 Stat. L., 1084, 2 Fed. St. Ann., 592.

(*i*) For 20 years the laws of the United States, not locally inapplicable, have been enforceable in Porto Rico by the regularly appointed agencies of the United States. 31 Stat. L., 80, 7 Fed. St. Ann., 1267.

(*j*) For 20 years the laws of the United States relative to the organization and powers of national banks have extended to Porto Rico. 23 Op. Atty Gen., 169.

(*k*) And likewise the immigration laws of the United States are in force and effect in Porto Rico. 24 Op. Att'y Gen., 86.

(*l*) For 9 years the Federal Employer's Liability Act has been applied to Porto Rico. American R. Co. *vs.* Birch, 224 U. S., 227 U. S., 145, 56 L. Ed., 879.

(*m*) And also the Federal Safety Appliance Act. American Railway Co. *vs.* Didricksen, 227 U. S., 145, 57 L. Ed., 456.

(*n*) Also the Federal Laws as to extradition, giving power to the governor of any organized territory, are extended to and in force in Porto Rico. New York *vs.* Bingham, 211 U. S., 468, 53 L. Ed., 286. And since March 2, 1917, see the Jones Act establishing local government in Porto Rico.

(*o*) By Act of March 3, 1919, a census of population, etc., is required to be taken by the Director of the Census in each State, the District of Columbia, Alaska, Hawaii and Porto Rico. The census is to be taken in other named territorial acquisitions in a different method than is provided for in the States and Organized Territories. Fed. St. Ann. Supp., 1919, p. 15.

(*p*) And the Federal Bankruptcy Acts are held to be in force and effective in Porto Rico, and to supersede the local laws on the same subject. In Re Vidal, 233 Fed., 733, 147 C. C. A., 499.

The Present Organic Law.

If, after the above enumeration, there could still remain any question as to whether Porto Rico has been formally placed under the jurisdiction of the United States Constitution, in the fullest manner possible, that question is, to our minds, absolutely answered by the existing organic law contained in "An Act to provide a civil government for Porto Rico and for other purposes," being the Act of March 2, 1917, Chapt. 145, 39 Stat. L., 951, Fed. St. Ann. Supp. for 1918, p. 607 (the Jones Act). In this connection it will be noted that the events complained of in these appeals occurred subsequent to the date upon which this act took effect, while in terms by its section 58, the prior laws not in conflict with its provisions were continued in effect, and all inconsistent laws repealed.

It is true that there is no express statement in this Act that the Constitution is in so many words extended to Porto Rico, but this becomes immaterial because unnecessary, as we have heretofore shown, and, in addition, upon consideration of sections to which we are about to allude. It is also true that there is contained in this Act a bill of rights for Porto Rico which does not expressly include right of trial by jury, but we are not claiming under any bill of rights of Porto Rico, but under the Constitution of the United States. The existence of a territorial bill of rights for Porto Rico does not negative the application of the Federal constitution any more than would the existence of State Bills of Rights.

The intention of Congress to incorporate Porto Rico

and its citizens into the body of American citizenship and possession is indicated in many sections of the act now referred to. There are two sections to which we desire to call particular attention. By Section 5 all citizens of Porto Rico, as defined by the Foraker Act, and this included all not disclaiming citizenship, in accordance with its provisions under the treaty with Spain, "are hereby declared and shall be deemed and held to be citizens of the United States." We omit the provisos which have no reference to the question before the court.

As if to demonstrate the intention of Congress, were it necessary, with still more clarity, we turn to Section 41 relating to the jurisdiction, etc., of the United States District Court and we find as follows: "The District Court for said District shall be called 'The District Court of the United States for Porto Rico.' " Further, reading Section 41, we find that this District Court "Shall have jurisdiction for the naturalization of aliens and Porto Ricans, and for this purpose residence in Porto Rico shall be counted in the same manner as residence *elsewhere in the United States.*" It further appears from the same section that the salaries of the judge and the officials of the District Court of the United States for Porto Rico, together with court expenses, are to be paid from the United States revenues, in the same manner as those of the other United States district courts.

We have before us cases in which the defendant, himself a citizen of Porto Rico, and made by statute a citizen of the United States, is dwelling within a jurisdiction where his rights are to be regarded, as specially stated in case of naturalization, with as great solicitude as are the rights of those resident "elsewhere in the United States," as the statute puts it.

Decisions Referred to in the Supreme Court of Porto Rico.

In the opinion of the court below (Rec., p. 17, of No. 178), reliance is had upon the decisions of this court in the case of People of Porto Rico *vs.* Carlos Tapia, and People of Porto Rico *vs.* Jose Muratti, 245 U. S., 639, and 62 L. Ed., pp. 525, 526. These cases seem to have special reference to the application of the 5th Amendment to the Constitution reading, as affecting this question, "no persons shall be held to answer for a capital, or otherwise infamous crime unless on a presentment or indictment of a grand jury," etc.

The opinions of this Honorable Court, in the cases named, were memorandum opinions, and it is fair to believe were rendered with reference to the conditions which prevailed prior to the passage of the Act of March 2, 1917, known as the Jones Act. Certainly, as would appear from the record in the Clerk's Office, the offenses charged were committed before the date of such act and before it was possible, apparently, for the legislature of Porto Rico to have provided for a grand jury. We may believe therefore that all of the considerations we have set forth in this brief were not reviewed by this court before the memorandum decisions were pronounced.

The opinion of the court below is evidently further based upon some idea that the offense of libel, not being a felony, and probably not infamous, the 6th Amendment to the Constitution, relative to right of trial by jury, was not applicable to Porto Rico; the Code of Criminal Procedure providing only for a jury trial in the case of a felony. In view of the statement of this Court in the case of Callan *vs.* Wilson, that, "It is a matter of history that the offense of libel was always triable and tried by jury," and the well understood law that the purpose of the Constitutional amendment

was to preserve the right of trial by jury as theretofore existing, it becomes a matter of absolute unimportance, in our view, whether, by the laws of Porto Rico, libel is called a felony or not.

We need not argue more than we have that libel is an offense particularly subject to trial by jury; that trial by jury is a constitutional right which in this case was claimed in due and ample time, and that therefore the decision of the Supreme Court of Porto Rico must be reversed.

Respectfully submitted,

JACKSON H. RALSTON,
STANLEY D. WILLIS,
WM. T. RANKIN,
Attorneys for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

No. 178.

JESUS M. BALZAC, *Appellant*,
vs.
THE PEOPLE OF PORTO RICO.

No. 179.

JESUS M. BALZAC, *Appellant*,
vs.
THE PEOPLE OF PORTO RICO.

BRIEF FOR THE PEOPLE OF PORTO RICO, APPELLEE.

STATEMENT OF THE CASES.

In Case No. 178 the prosecuting attorney filed in the District Court of Arecibo, Porto Rico, on May 31, 1918, a sworn information against Jesus M. Balzac, charging him with the crime of libel (misdemeanor) as defined and punished in Sections 243 and 244 of the Penal Code of Porto Rico (R. 1–2). At 3:00 p. m., May 31, 1918, the appellant appeared in the District Court and after having been informed of the contents of the information as provided in Section 143 of the Code of Criminal Procedure of Porto Rico entered a plea of not guilty. When the case was called for trial on July 29, 1918, counsel for the appellant "moved orally that the defendant be allowed a trial by jury." The court overruled the motion on the ground "that no right is conferred to a jury trial in these cases

under our criminal procedure;" and on the further ground that even if the law granted trials by juries in misdemeanor cases the defendant "should have asked for it at the time of his arraignment, and not having done so it should be understood that he waived that right, as decided by the Supreme Court of Porto Rico in the case of *Ex Parte Torres*, 4 P. R. R., 146" (R. 4–5). Thereupon the trial was had, the appellant found guilty on July 29, 1918, and sentenced to imprisonment for five months in the district jail and to the payment of the costs of the cause (R. 3). On appeal to the Supreme Court of Porto Rico the judgment was affirmed on March 4, 1920 (R. 17–18).

In Case No. 179 an information was filed by the prosecuting attorney in the District Court of Arecibo, Porto Rico, on May 31, 1918, charging the appellant, Jesus M. Balzac, with the crime of libel (misdemeanor) as defined and punished in Sections 243 and 244 of the Penal Code of Porto Rico. The same proceedings were had in this case as in Case No. 178, and the defendant-appellant was found guilty and sentenced to imprisonment for four months and to the payment of the costs of the cause (R. 3). On appeal to the Supreme Court of Porto Rico the judgment was affirmed on March 4, 1920 (R. 14–15).

ASSIGNMENT OF ERRORS.

In each case the assignment of errors, upon which the appellant relies in this court, are as follows:

> "1st. Because the defendant has been denied the right granted him by the Sixth Amendment to the Constitution of the United States of being tried by a jury.
>
> "2nd. Because, in any event, if the law under which he was convicted and sentenced furnishes sufficient grounds therefor, it should be considered, by reason of its excessive harshness, as contrary to the letter and spirit of the First Amendment to the Constitution of the United States."

ARGUMENT.

The second assignment is not pressed in the argument. Counsel merely call the attention of the court to the case of *Grandia* v. *Pittingill*, 222 U. S. 452, and say that any punishment for the publication of the articles in question is excessive and unwarranted. Upon this point we think it sufficient to invite the attention of the court to that part of the opinions of the court below wherein the court said:

> "The article transcribed in the information in this case is so violent in its invective that we do not see fit to reproduce it for the purposes of our records" (Case No. 178).
>
> "Here also the language employed in the libelous publication is so abusive that we believe it would be improper to transcribe it" (Case No. 179).

The language complained of in each case *certainly* exceeds "exuberant expressions of meridional speech."

Before taking up the main question whether or not the appellant was entitled to jury trials, it might be well to inquire whether he waived such right, if it existed, by his failure to make his applications therefor in due time.

It is provided by the jury law of Porto Rico that a defendant is entitled to a jury in all cases of felony, provided he demands the same at the first general call of the calendar and his case is put upon the jury docket (Code of Criminal Procedure, Section 178). No demand was ever made on behalf of the appellant for jury trials, prior to or at the time of his arraignment, or for nearly two months thereafter, when his counsel came into court on the very day of the trials, July 29, 1918, and orally demanded jury trials, which were refused because the offenses of which he was accused were only misdemeanors, and not felonies, and moreover, because he had not demanded juries within the time prescribed by law, and therefore waived the right, if any he had. *Ex parte Torres*, 4 P. R. R. 147, 151; *Ex parte Bird*, 5 P. R. R., 505, 529.

Counsel for appellant, in opening their argument in support of the proposition that their client has been denied the right granted him by the Sixth Amendment to the Constitution of the United States of being tried by a jury, say:

> "Stress seems to have been laid in the courts below upon the fact that the offenses charged were only misdemeanors, and that, by the laws of Porto Rico, misdemeanors may not be the subject of jury trial. Claiming as we do the benefit of the Constitutional provisions, this argument can have no weight in this court. We need not go further than to refer to the case of *Callan* vs. *Wilson*, 127 U. S., 540, 556, wherein is cited with approval the decision of Mr. Justice Blatchford, then a member of the Supreme Court of the United States, who, sitting in a lower court, in Re Dana, 7 Benedict, p. 1, said:
>
> "'Even if it were to be conceded, that notwithstanding the provision in the Constitution that "the trial of all crimes, except in cases of impeachment," shall be by jury, Congress has the right to provide for the trial, in the District of Columbia, by a court without a jury, of such offenses as were, by the laws and usages in force at the time of the adoption of the Constitution, triable without a jury, it is a matter of history, that the offense of libel was always triable and tried, by a jury.'"

The pertinent provisions of the Penal Code of Porto Rico (Compilations of the Revised Statutes and Codes of Porto Rico, March 9, 1911, beginning on page 876) read as follows:

> "(5419) Sec. 13. Crimes are divided into: First, Felonies; and Second, Misdemeanors.
>
> "(5420) Sec. 14. A felony is a crime which is punishable with death or by imprisonment in the penitentiary. Every other crime is a misdemeanor. When a crime punishable by imprisonment in the penitentiary is also punishable by fine or imprisonment in jail, in the discretion of the

court, it shall be deemed a misdemeanor for all purposes after a judgment imposing a punishment other than imprisonment in the penitentiary.

"(5675) Sec. 243. A libel is a malicious defamation, expressed either by writing, printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue, or reputation, or publish the natural or alleged defects of one who is alive, and thereby to expose him to public hatred, contempt or ridicule.

"(5676) Sec. 244 (as amended by act of March 9, 1911, page 71). Every person who wilfully publishes or procures to be published any libel, or distributes or causes to be distributed any libelous matter in the form of leaflets, cards, or any other manner whatsoever, either printed or written, posting or causing them to be posted in any place, is punishable by fine not exceeding five thousand dollars, or imprisonment in jail for a term not exceeding two years, or both such fine and imprisonment, and also the costs of the action, in the discretion of the court."

At the time of the adoption and the going into effect of the Penal Code and the Code of Criminal Procedure of Porto Rico, Section 246 of the former and Section 264 of the latter provided that in all cases of libel the jury shall determine the law and the fact. But this was held, in *The People* v. *Bird*, 5 P. R. R., 387, 405, to go no further than whenever a jury may be provided for or allowed in a libel case, they shall "have the right to determine the law and the fact." This question was set at rest by the Act of March 10, 1904, which repealed the Jury Act in so far as it related to the trial of persons for libel. The benefits of the jury law were not extended to cases of libel or any other misdemeanor by the legislature of Porto Rico until ninety days after the approval, on July 22, 1919, of the Act amending Section 178 of the Code of Criminal Procedure. Tried by Section 14, *supra*, of the Penal

Code, the crime of which the appellant was convicted is clearly a misdemeanor, since the only punishment which could be inflicted is a fine and imprisonment in the public jail. We not only do not agree with counsel that "this argument can have no weight in this court," but urge that it is an absolutely determinative factor in these cases, because, as we will attempt to show later, the provisions of the Sixth Amendment to the Constitution of the United States are not applicable to Porto Rico and for this reason the case of *Callen* v. *Wilson, supra*, is not in point.

SIXTH AMENDMENT NOT IN FORCE IN PORTO RICO.

In case No. 178, the Supreme Court of Porto Rico said:

> "As we understand the decisions of the Supreme Court of the United States in the cases of *People of Porto Rico et al.* v. *Carlos Tapia* and *People of Porto Rico et al.* v. *Jose Muratti*, 245 U. S. 639, that part of the 6th Amendment of the Constitution of the United States giving a defendant in all criminal cases a right to trial by jury is not applicable to Porto Rico. Under the Code of Criminal Procedure a defendant is only entitled to a jury trial in cases of felony" (R. 17).

In respect to these cases, counsel for appellant say that "it is fair to believe (that the decisions) were rendered with reference to the conditions which prevailed prior to the passage of the Act of March 2, 1917, known as the Jones Act. Certainly, as would appear from the record in the Clerk's Office, the offenses charged were committed before the date of such Act and before it was possible, apparently, for the legislature of Porto Rico to have provided for a grand jury."

The judgments in the Tapia and Muratti cases were reversed on January 21, 1918, in *Per Curiam* opinions upon the authority of the cases cited in the first and without stating any of the facts or giving any additional reasons.

It is, therefore, necessary to state the facts briefly in order to understand the scope of these decisions.

Carlos Tapia was arrested, charged in an information filed by the Fiscal with a felony alleged to have been committed on March 15, 1917, within the jurisdiction of the District Court of San Juan, Porto Rico. Being held in confinement on that charge by order of the District Court of San Juan, he filed his petition for a writ of habeas corpus in the District Court of the United States for Porto Rico on April 10, 1917, seeking his release on the ground that he could not legally be held to answer that charge without a presentment or indictment by a grand jury as provided in the Fifth Amendment to the Constitution of the United States. After hearing, the United States District Judge held that the petitioner could not legally be brought to trial without an indictment by grand jury and ordered that if an indictment were not found against the petitioner by a certain date he will be released from confinement. From this order and judgment an appeal was taken direct to the Supreme Court of the United States (Transcript of Record).

Jose Muratti was charged in an information filed by the Fiscal on April 12, 1917, in the District Court of Mayaguez, Porto Rico, with the crime of murder in the second degree alleged to have been committed on the night of February 23, 1917. On the day of arraignment in the District Court of Mayaguez he presented a motion asking the court to annul or set aside the information because it was filed without a presentment or indictment by a grand jury in accordance with the Fifth Amendment to the Constitution of the United States. The motion was denied, and he, being held in confinement on said charge, thereupon moved the case into the Supreme Court of Porto Rico by means of a writ of certiorari where the question was heard and determined; that court, holding the plea good, annulled the information and all subsequent proceedings. This

case came direct to the Supreme Court of the United States on writ of error (see Transcript of Record).

Carlos Tapia was at the time of the application for the writ of habeas corpus in the custody of the authorities under a commitment of the judge of the District Court of San Juan to await trial for the alleged offense of assault with intent to murder, without any indictment having been found against him by a grand jury. Judge Hamilton of the District Court of the United States for Porto Rico held that "the point in the case, therefore, is whether under the Jones Act of March 2, 1917 (the present Organic Act of Porto Rico), Amendment V of the Constitution applies, requiring that 'no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury.'"

In the Muratti case Mr. Justice Wolf in delivering the opinion of the Supreme Court of Porto Rico stated: "The real question before the court is whether the Constitution of the United States is in full force and vigor in Porto Rico, and especially said Fifth Amendment." Both the District Court of the United States for Porto Rico and the Supreme Court of Porto Rico gave the question thorough consideration after an extensive investigation. Counsel for each side in each case in the Supreme Court of the United States presented elaborate briefs which likewise show thorough investigation and consideration. No question was left uncertain for failure to investigate it. This court after being fully advised reversed the judgment of the District Court of the United States for Porto Rico and the judgment of the Supreme Court of Porto Rico wherein it was expressly held that the prisoners, Carlos Tapia and Jose Muratti, could not be legally held to answer the crimes charged unless on a presentment or indictment of a grand jury.

In the Tapia case this court said:

> "Judgment reversed upon the authority of *Downes* v. *Bidwell*, 182 U. S. 244; *Hawaii* v.

Mankichi, 190 U. S. 197; *Dorr* v. *United States*, 195 U. S. 138; *Rassmussen* v. *United States*, 197 U. S. 516; *Kopel* v. *Bingham*, 211 U. S. 468; *Dowdell* v. *United States*, 221 U. S. 91; *Porto Rico* v. *Rosaly*, 227 U. S. 270, 274; *Ocampo* v. *United States*, 234 U. S. 91, 98."

In the Muratti case the court used this language:

> "Judgment reversed upon the authority of *People of Porto Rico* v. *Tapia*, just decided, *supra*, this page, and authorities therein cited."

An examination of the cases cited by this court as authority for the reversal of the judgments in the Tapia and the Muratti cases will disclose that the following propositions are clearly and firmly settled:

(a) The treaty-making power of the United States is devoid of authority to incorporate foreign territory into the United States without the assent, express or implied, of Congress;

(b) The Treaty of Paris not only contains no conditions for the incorporation of Porto Rico and the Philippines but expressly provides that the civil rights and political status of the native inhabitants shall be determined by Congress. Therefore, incorporation does not arise until in the wisdom of Congress it is deemed that the acquired territories have reached that state where it is proper that they should enter into and form a part of the American family.

(c) Those provisions of the Fifth and Sixth Amendments to the Constitution of the United States relating to indictments of grand juries and the right of trial by jury do not, without legislation and of their own force, extend to ceded territory not made a part of the United States by Congressional action;

(d) The requirement of an indictment by grand jury and the right to trial by jury are not fundamental rights which go of their own force wherever the jurisdiction of the United States extends and are

not included within the guaranty of "due process of law;"

(e) The test, and the only test, of whether or not ceded territory is incorporated, is the expression of the intent of Congress that it shall be incorporated. This has not been done in respect of Porto Rico and the Philippine Islands.

It having been settled past dispute that incorporation did not arise in the case of Porto Rico prior to the New Organic Act of March 2, 1917 (39 Stat. 951), we insist that the passage of that Act did not bring about such incorporation and that this must necessarily have been the conclusion reached by the court in disposing of the Tapia and Muratti cases, *supra*, because the judgments of reversal can rest upon no other grounds.

In support of this proposition attention is invited to the excellent briefs filed by Messrs. Howard L. Kern, Samuel T. Ansell, and Edward S. Bailey, Attorneys for The People of Porto Rico in the Tapia case on the merits, made applicable to the Muratti case, and in the Muratti case in support of the petition for certiorari.

The above-mentioned Attorneys for The People of Porto Rico in said cases stood squarely on the proposition that Tapia and Muratti could be legally held to answer for the crimes charged notwithstanding the fact that no presentment or indictment of a grand jury had been found against them because Porto Rico had not been incorporated into the United States by the Act of March 2, 1917, or by any prior or subsequent Congressional legislation. That Act was analyzed for the purpose of showing that Congress did not intend to incorporate Porto Rico by its passage. We desire to reproduce in substance some of the salient points set forth in those briefs.

Prior Acts of Congress contained no bill of rights for the people of Porto Rico. Section 2 of the Act of March 2, 1917, contains the first bill of rights enacted for Porto

Rico. This section consists of twenty-five paragraphs. All but seven of these paragraphs are copied practically word for word from the Constitution of the United States. Every *fundamental* right granted by the Constitution to an American citizen, or to any other person, is guaranteed to the people of Porto Rico by this bill of rights. The right to a presentment or indictment of a grand jury, secured by the Fifth Amendment, and the right to a trial by a jury in criminal cases, secured by the Sixth Amendment, are not given by the Porto Rican bill of rights. These rights are not fundamental in their nature but merely concern a method of procedure. If the Act of March 2, 1917, incorporated Porto Rico, then practically the entire bill of rights contained in Section 2 was useless, since the same rights would be granted directly by the Constitution itself.

Section 9 of the Act of March 2, 1917, in providing for the application of the statutory laws of the United States in Porto Rico, with certain execptions, makes no reference whatever to the Constitution. Section 40 provides that the jurisdiction of the Porto Rican Courts and "*the form of procedure in them,*" shall continue to be as now provided until otherwise provided by law. Under the authority of the case of *Rassmussen* v. *United States*, 197 U. S. 516, it is clear that Congress could not lawfully continue in force in Porto Rico the established criminal procedure if the Island were made an incorporated territory by that Act. Section 2 empowers the President or the Governor of Porto Rico to suspend the privilege of the writ of *habeas corpus* in case of rebellion, insurrection, or invasion whenever the necessity for such suspension shall exist, while in the absence of express legislative authority the President is without power to suspend the privilege of the writ as provided by the Constitution.

The basis of the decision of the Supreme Court of Porto Rico in the Muratti case was the grant of collective citizen-

ship to the Porto Ricans. In speaking of the argument presented on behalf of The People of Porto Rico the court said:

> "Indeed, were it not for the grant of citizenship in the Jones Act, the contention of the Attorney General, under the authorities would have to prevail, but collective citizenship was granted to the inhabitants of Porto Rico by the Jones Act."

While it will thus be seen that the Supreme Court of Porto Rico held that the grant of collective citizenship was not merely an *indicia* of an intent to incorporate but constituted in fact incorporation itself, it was urged that the grant, so far from amounting to incorporation, was a strong *indicia* of Congressional intent not to incorporate.

Section 5 of the New Organic Act of March 2, 1917, provides that "*all citizens of Porto Rico*, as defined by the Act of April 12, 1900," and all natives falling within the designated class, "are hereby declared, and shall be deemed and held to be, citizens of the United States: *Provided*, That any person hereinbefore described *may retain his present political status* by making a declaration, * * *." Under this section a person may be a citizen of Porto Rico and not a citizen of the United States. The cases cited in the briefs heretofore mentioned and to which the attention of the court has been invited hold that *a citizen of a State or an incorporated Territory is ipso facto a citizen of the United States. No one can be the former without also being the latter.* The reason why this is true arises from the nature of citizenship under the American system of government. A citizen is a constituent member of the United States government, and all the citizens *form the sovereignty* and hold the power and conduct the government through their representatives. "They are," say the court in *Boyd* v. *Thayer*, 143 U. S. 135, 159, "what we familiarly call the 'sovereign people' and every citizen is

one of this people, and a constituent member of this sovereignty."

It makes no difference whether or not any person or persons have taken advantage of the right given by the Act to renounce American citizenship and retain Porto Rican citizenship. The important fact is that Congress has recognized that a person may be a citizen of Porto Rico without being a citizen of the United States, and since this is true it is impossible for Porto Rico to have been incorporated into the United States.

The result is that the New Organic Act (the Act of March 2, 1917) *clearly shows an affirmative Congressional intent that Porto Rico should not be incorporated into the United States.*

Porto Rico is different from Alaska. In the granting of citizenship to the inhabitants of Alaska there was no provision by which the inhabitants of that territory could retain a status as citizens of Alaska and not be citizens of the United States. The case of *Rassmussen* v. *United States, supra,* chiefly relied upon by Tapia and Muratti, is cited by this court as authority for the reversal of those judgments.

The mere grant of collective or individual citizenship to the North American Indians did not of itself show an intent on the part of Congress to do away with or change the relations existing between the Federal Government and the Indians. *Tiger* v. *Western Investment Company,* 221 U. S., 286. In *United States* v. *Celestine,* 215 U. S. 278, it was held that the United States was not deprived of exclusive jurisdiction to try an Indian for an alleged crime committed by him upon an Indian reservation by reason of the fact that the Indian was a citizen of the United States.

The Constitution of the United States is territorial and not personal in its operation. An American citizen while outside the incorporated limits of the United States, although

he is tried by a tribunal constituted under authority of an act of Congress, is not entitled to either a presentment or indictment by a grand jury or to be tried by a jury. On the other hand, a foreigner in the United States is entitled to these rights, not because he is a citizen of the United States, but because he is within the territory governed by the Constitution. *In re Ross*, 140 U. S., 453; *Dorr* v. *United States*, 195 U. S. 138.

The contention of counsel, set forth in the last paragraph of their brief, "that libel is an offense particularly subject to trial by jury," has no application in Porto Rico. No one in Porto Rico is entitled as of right to a trial by jury in any case. The matter is entirely in the hands of the local authorities.

The judgments in these cases, being as they are strictly in accordance with the law and the merits, should be affirmed with costs.

Respectfully submitted,

GRANT T. TRENT,
Lieutenant-Colonel, Judge Advocate,
Attorney for Appellee.

Of Counsel,
ARTHUR W. BEER,
Captain, Judge Advocate.